

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CONOPCO, INC. d/b/a/ UNILEVER,

*Plaintiff,*

v.

2026 THIRD REALTY, LLC, HAE HEE KIM, COURTNEY HAEJIN KIM, DANIEL HUNGSIK KIM, BRYANT KIM, K & K FOOTWEAR, INC., AND JOHN DOES 1-10, inclusive,

*Defendants.*

Case No. \_\_\_\_\_

**DECLARATION OF BENJAMIN MURPHY IN  
SUPPORT OF CONOPCO, INC. D/B/A/  
UNILEVER'S APPLICATION FOR AN *EX  
PARTE* TEMPORARY RESTRAINING ORDER;  
ORDER AUTHORIZING *EX PARTE* SEIZURE;  
ORDER TO SHOW CAUSE FOR PRELIMINARY  
INJUNCTION; AND ORDER ALLOWING  
EXPEDITED DISCOVERY**

**FILED UNDER SEAL**

I, Benjamin Murphy, declare as follows:

1. I am a resident of the state of New York, over the age of 18, and am competent to make this declaration which is based upon my personal knowledge of the facts stated herein or on the business records that were made in the regular course of business. If called as a witness, I could and would testify to the statements made herein. I make this declaration in support of Plaintiff Conopco, Inc. d/b/a Unilever's ("Unilever") application for entry of an *ex parte* temporary restraining order, order authorizing an *ex parte* seizure, order to show cause for preliminary injunction, and order allowing expedited discovery (the "TRO Application").



2. I am a Business Development Manager at Unilever responsible for North America Brand Protection. I have worked at Unilever for more than seven years, with five years of Brand Protection responsibilities in connection with the HELLMANN'S brand. As part of my job responsibilities, I am familiar with the labels, packaging, appearance, and markings for the genuine HELLMANN'S mayonnaise products sold and distributed by Unilever through authorized trade channels ("Genuine HELLMANN'S Products").





3. Since at least 1926, Unilever (including through predecessors) has used the iconic HELLMANN'S brand in connection with mayonnaise and related food products in the United States.

4. As a result of billions of dollars in sales, widespread advertising and promotion through virtually every available type of media, and commercial success and recognition, the HELLMANN'S trademark has been famous for decades.

5. Consumers trust the HELLMANN'S brand and have come to associate it with high-quality mayonnaise and other food products. Indeed, Unilever uses stringent quality control and other measures to deliver the highest quality products to its customers and ensure their health and safety.

6. Unilever is the owner of the several valid and subsisting trademark registrations for the HELLMANN'S trademarks and logos, which appear on the Principal Register in the United States Patent and Trademark Office ("PTO"), and alone or in combination on all Genuine HELLMANN'S Products, including:

Mark	Registration No.	Date Registered	Goods/Services
HELLMANN'S (Stylized) 	0514280	August 23, 1949	Mayonnaise, salad dressings, sandwich spread, and tartar sauce
	1017067	July 29, 1975	Salad dressing, mayonnaise, mayonnaise dressing, and relish sandwich spread; tartar sauce
BLUE RIBBON HELLMANN'S REAL MAYONNAISE	1236589	May 3, 1983	Mayonnaise

			
BRING OUT THE BEST	1478873	March 1, 1988	Mayonnaise
HELLMANN'S 'BRING OUT THE BEST'	4721213	April 14, 2015	Mayonnaise and salad dressings
			
Richard Hellmann (Stylized) <i>Richard Hellmann</i>	5514321	July 10, 2018	Mayonnaise; tartar sauce; sandwich spread comprised primarily of mayonnaise, ketchup, relish, mustard or tartar sauce
HELLMANN'S EST. 1913 	5869191	September 24, 2019	Mayonnaise; dressings for salad; ketchup; tomato sauce; sauces; relish; mustard; vinegar.
HELLMANN'S EST. 1913 	6357670	May 18, 2021	Oils and fats for food.

(hereinafter, the “HELLMANN’S Marks”). True and correct copies of the federal trademark registration certificates for the HELLMANN’S Marks are attached as Exhibit 1.

7. On or around April 11, 2022, members of the public noticed large quantities of HELLMANN’S-branded mayonnaise (the “Counterfeit Products”) visible through the windows of

what appears to be an empty storefront located at 2026 3<sup>rd</sup> Avenue New York, New York 10029-2886 (“Location”).

8. As shown in the representative examples below, the Counterfeit Products have attracted attention on social media:



Tanooki Joe  
@TanookiKuribo

...

I've passed by this store that was closed for months, today the metal gate was a little open and I saw inside and it's just full of mayo. 🧑



4:20 PM · Apr 11, 2022 · Twitter for iPhone

9. The social media attention culminated in a NEWSWEEK article commenting on “the mysterious mayonnaise haul . . . in East Harlem”:



A true and correct copy of the April 13, 2022 NEWSWEEK article is attached as Exhibit 2.

10. In response to the above social media and press coverage, on or about April 18, 2022, I visited the Location. The Counterfeit Products were visible through the glass door and windows at the Location. True and correct copies of the photographs I took of the Counterfeit Products at the Location are shown below and attached as Exhibit 3:







11. When I asked to enter the Location to inspect the products, an individual at the Location refused my request, and I left the Location.



12. Unilever then conducted a detailed visual inspection and analysis of the Counterfeit Products based on the photographs I took at the Location. Unilever concluded that the products are almost certainly counterfeit. Specifically, the Counterfeit Products differ from the Genuine HELLMANN'S Products in at least the following respects:

- a. Unilever does not use the batch code format featured on the Counterfeit Products, below:



Instead, Unilever uses the following unique format to identify the date, plant, production line, and time on the Genuine HELLMANN'S Products:



- b. The batch code expiration date appears to be pre-printed on the label of the Counterfeit Products; Unilever does not imprint the batch code date on the labels of its Genuine HELLMANN'S Products, rather the date is later laser coded on to the label during production, at the time the product is packaged at a plant.
- c. Genuine HELLMANN'S Products do not use the type of pressure-sensitive labels that appear on the Infringing Products (shown above).
- d. Unlike the Genuine HELLMANN'S Products, the shrink wrap around the case of the Counterfeit Products appeared loose, not properly sealed, and likely taped over with package tape:





The shrink wrap on the Genuine HELLMANN'S Products goes through the heat tunnel process to ensure that the shrink wrap is attached tightly to the jars to secure them when transporting the product. By contrast, the shrink wrap on the Counterfeit Products is loose.

- e. The graphic on the following Counterfeit Product label differs from the graphic on the Genuine HELLMANN'S Products:



**Counterfeit Product**



**Genuine HELLMANN'S Product**

Specifically, the Genuine HELLMANN'S Product label features an image of the eggs on a yellow background. By contrast, the Counterfeit Product label features an image of the eggs on a blue background, and the image also appears to be upside down.

13. Upon closer inspection, there may be additional differences between the Genuine HELLMANN'S Products and the Counterfeit Products (including, most importantly, the contents and quality of the products), but because the individual at the Location denied entry, Unilever was not able to secure a physical sample or take additional photographs of the Counterfeit Products on or about April 18, 2022.

14. Unilever has no record of selling any Genuine HELLMANN'S Products to the Location, nor any knowledge of the following entities and individuals that, based on Unilever's investigation, are associated with the Counterfeit Products and Location:

- 2026 Third Realty, LLC
- Hae Hee Kim
- Courtney Haejin Kim
- Daniel Hungsik Kim
- Bryant Kim

- K & K Footwear, Inc.

15. Based on the facts detailed above, Unilever believes that the Counterfeit Products are almost certainly counterfeit HELLMANN's mayonnaise products not manufactured or authorized by Unilever.

16. Unilever has not authorized Defendants' use of the HELLMANN'S Marks and/or their use, sale, or distribution of the Counterfeit Products with the HELLMANN'S Marks.

17. Because the Counterfeit Products are not subjected to Unilever's quality control testing/measures and are manufactured, distributed, and/or sold without Unilever's authorization, they could threaten consumer health and safety and cause substantial harm to consumers.

18. Not only do the Counterfeit Products create a substantial risk of harm to consumer health and safety, but their sales and distribution will likely irreparably harm Unilever, Unilever's reputation, and their hard-earned goodwill in the HELLMANN'S Marks.

19. To stop Defendants' sale, offering for sale, manufacture, distribution, and marketing of Counterfeit Products, Unilever respectfully requests that this Court grant Unilever's TRO Application in its entirety.

20. Unilever has not publicized the relief sought in the TRO Application.

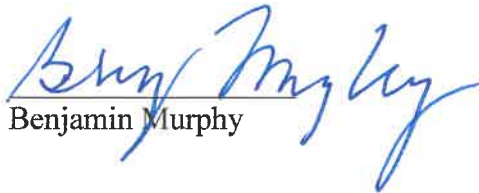
21. Without the requested relief, Defendants' unlawful activities will continue unabated, and Unilever and consumers will suffer irreparable harm, including risk to consumer health and safety.

22. Monetary damages alone cannot adequately compensate Unilever for ongoing infringement because monetary damages fail to address the risk to public health and safety and the loss of control of and damage to Unilever's reputation and goodwill.

23. Moreover, without the relief sought, Defendants are likely to dispose of, destroy, or otherwise tamper with the evidence related to their infringing and counterfeiting activities.

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct.

Executed on April 27, 2022 in New York, New York.

  
Benjamin Murphy